

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

OMNI LIVING SERVICES, INC.

Employer

and

Case 7-RC-22944

**LOCAL UNION 517M,
SERVICE EMPLOYEES INTERNATIONAL UNION**

Petitioner

APPEARANCES:

Ricky Webb, of Flint, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing office of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding¹, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.²

¹ Briefs were due on February 7, 2006. Neither party submitted a brief. The Employer failed to appear at the hearing. The petition was served by regular mail on the Employer at its Dearborn Heights post office box on January 18, 2006. On January 20, a Notice of Representation Hearing issued setting this matter for hearing on January 31. The Notice of Representation Hearing was served on the Employer by facsimile on January 20, and was received by the Employer on that date as evidenced by a facsimile confirmation receipt.

3. The labor organization involved claims to represent certain employees of the Employer.³

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

INTRODUCTION

The Petitioner seeks to represent a single unit of approximately 40 full-time and part-time home coordinators⁴, assistant home coordinators⁵, medication coordinators, behavioral technicians, and direct care workers employed by the Employer at its adult foster care facilities located at 202 Garden Lane, 72786 Cecilia, 316 South Porter, and 1021 Webster, all located in Saginaw, Michigan, but excluding all resident assistants, and guards and supervisors as defined in the Act. The Employer was not present at the hearing and raised no issues prior to the hearing. The Petitioner contends that the multi-location, petitioned-for unit is appropriate.

² The Employer failed to return a commerce questionnaire as requested upon service of the instant Petition. The Region sent a letter to the Employer on January 24, 2006 requesting commerce information. The Region did not receive a response. Therefore, jurisdiction will be asserted without regard to whether any jurisdictional standard is shown to be satisfied, if the record at a hearing establishes that the Board has statutory jurisdiction. *Tropicana Products*, 122 NLRB 121, 123 (1959); *Major League Rodeo, Inc.*, 246 NLRB 743 (1979); and *Continental Packaging Corp.*, 327 NLRB 400 (1998).

To establish jurisdiction, the record may consist solely of secondary evidence regarding commerce presented by knowledgeable employees or union officials. *J.E.L. Painting & Decorating*, 303 NLRB 1029, 1030 (1991). The Employer, a corporation, cares for 18 residents at its 4 Saginaw homes. At least one of these residents pays \$778.00 a month in rent. Taking that amount and multiplying it by the 18 residents at the Saginaw facilities, gross revenue for the year ending December 31, 2005 would exceed \$100,000. Additionally, the record indicates that the Employer uses utility services such as gas and electric, and received a December 2005 energy bill of \$400, thereby meeting the requirement for interstate commerce. *Aurora City Lines*, 130 NLRB 1137 (1961) (Board held that \$2000 a year of indirect inflow of goods and materials was not a “de minimis” amount and was enough to affect commerce and satisfy the jurisdictional standard).

³ The Petitioner exists for the purpose of dealing with employers regarding employees’ terms and conditions of employment, or concerning other matters such as grievances, labor disputes, wages, rates of pay, and hours of employment. Petitioner’s members participate in the organization by attending meetings and voting at internal union elections.

⁴ Throughout the record, the terms home coordinator and home manager were used interchangeably. The correct title is home coordinator.

⁵ Throughout the record, the terms assistant home coordinator and assistant home manager were used interchangeably. The correct title is assistant home coordinator.

Based on the record, I find that the petitioned-for unit at the four Saginaw homes has sufficient geographic coherence and common interests of employees, to be found appropriate.

SUMMARY OF EVIDENCE

The Employer operates four adult foster care facilities in Saginaw and has two other facilities in Detroit, Michigan, and possibly a facility in Ypsilanti, Michigan. These other facilities are about 100 miles from the Saginaw homes.

The Employer operates round-the-clock at all four Saginaw facilities. There are three shifts. The day shift is from 7:00 a.m. to 3:00 p.m. The afternoon shift is from 3:00 p.m. to 11:00 p.m. The midnight shift is from 11:00 p.m. to 7:00 a.m. Three of the Saginaw facilities are structured homes where residents cannot leave the facility without being accompanied by a direct care worker/behavioral technician (DCW). The home located on Webster Street is a semi-independent home, or a SIP home. Residents are able to leave the home, unsupervised, although there is a curfew.

Cecil Newlin is an Employer owner. Lavenia Perkins is also an owner but the record is unclear as to the extent of her involvement. Next in the chain of command is a resident assistant.⁶ There are two different resident assistant positions, one for the two Detroit homes and another resident assistant in Saginaw for the four Saginaw homes. Currently, the resident assistant position is vacant in Saginaw. At each of the four Saginaw homes there is a home coordinator: Beth _____, Eric Jones, Terrance Shepard, and Kishon Blackman. Each of these home coordinators works the first shift. Directly below them are three assistant home coordinators: Bruce Poindexter, Sharon Chapman, and Ronnie Bryant. Each of these assistant home coordinators works second shift. Additionally, there are three medication coordinators. There is no assistant home coordinator or medication coordinator at the Webster Street home.

There is no history of collective bargaining at any of the Employer's facilities.

The staff also consists of direct care workers (DCW). DCWs are also referred to as behavioral technicians. Staffing by these workers depends upon the number of residents at the home. At the Garden Lane and Porter Street homes,

⁶ The Petitioner contends and the record establishes that resident assistants have the authority to transfer employees from home to home, adjust grievances, and approve employee raises and requests for vacation, sick leave, and overtime. Consequently, I find that resident assistants are supervisors as defined in Section 2(11) of the Act.

there are about five DCWs who work at each location. The record is unclear as to how many DCWs there are at each of the other homes.

All four of the Saginaw facilities in the petitioned-for unit are in close proximity to one another, the farthest being only five minutes away. Home coordinators, assistant home coordinators, DCWs, and medication coordinators at all four homes receive the same health benefits.⁷ Employees receive vacation time and the amount of time is based upon the number of years of service the employees have with the Employer, not with the position held. Employees who have worked at any of the four facilities from one to three years receive one week; for three or more years of service an employee receives two weeks. Assistant home coordinators and DCWs are paid hourly.⁸ The DCWs earn between \$7.00 and \$8.00 an hour, while the assistant home coordinators earn around \$8.50 an hour.

The assistant home coordinator assigns the DCWs their tasks at each home. When the DCWs arrive at work they consult the daily schedule book to determine what tasks they will be performing. DCWs are responsible for seeing that residents follow a morning routine that consists of waking up, tending to their personal hygiene, and dressing. They also monitor the resident in making meals and completing chores. DCWs may pass out medications on their shifts because there is no medication coordinator on the second and third shifts. The medication coordinator is charged with taking residents to their doctor appointments. If an appointment is scheduled for after 3:00 p.m., a DCW will take the resident to the appointment. Additionally, the assistant home coordinator and DCWs take residents on community outings.

Employees are sometimes temporarily transferred to work at the other homes in Saginaw. This is done on a volunteer basis. If someone is needed at one of the homes, the employees are asked if they want to work at the home. If no one agrees to work, the home coordinator or assistant home coordinator will go themselves to the home in need. There is no evidence of employee interchange between the four homes in Saginaw and the homes located in Detroit and Ypsilanti. The employees in Saginaw are under common supervision. All four of the Saginaw facilities are supervised by the same resident assistant. The home coordinators at each of the homes report to the resident assistant who in turn reports to the owner.

⁷ While home coordinators and assistant home coordinators receive the same healthcare benefits, they contribute less than DCW/behavioral technicians for these benefits.

⁸ The record is unclear as to the wage earned by home coordinators and medication coordinators.

ANALYSIS

Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for the purposes of collective bargaining, and there is nothing in the statute that requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or even the most appropriate unit. *Interstate Warehousing of Ohio*, 333 NLRB 682, 687 (2001), citing *Morand Brothers Beverage Company*, 91 NLRB 409, 418 (1950).

The determination of the proper scope of a bargaining unit when the employer operates more than one facility often presents special problems. The general rule is that a single-facility unit is presumptively appropriate, unless the employees at the facility have been merged into a more comprehensive unit by bargaining history, or the facility has been so integrated with the employees at another facility as to cause their single-facility unit to lose its separate identity. *Trane*, 339 NLRB 866 (2003); *Budget Rent A Car Systems*, 337 NLRB 884 (2002). An employer-wide unit is also presumptively appropriate. However, a grouping of facilities, less than employer-wide, into a single unit enjoys no presumption of appropriateness but may constitute an appropriate bargaining unit if there is a sufficient degree of geographic coherence and common interests of the employees at the facilities. *Haag Drug Co.*, 169 NLRB 877 (1968); *State Farm Mutual Automobile Insurance Co.*, 158 NLRB 925 (1966).

In considering whether either the single facility or employer-wide presumption has been rebutted and in looking at “all the circumstances in the case,” *Sav-On Drugs*, 138 NLRB 1032 (1962), the Board looks at a number of factors including: (1) central control over labor relations; (2) local autonomy; (3) interchange of employees; (4) similarity of skills; (5) conditions of employment; (6) supervision; (7) geographic separation; (8) plant and product integration; and (9) bargaining history. The scope of the unit sought by the petitioner is relevant but cannot be determinative of the unit. *Metropolitan Life Insurance, Co.*, 156 NLRB 1408 (1966).

In the instant case, a resident assistant oversees the operation of the four Saginaw homes. While he/she reports to the owner, the resident assistant is charged with making decisions regarding the transfer of employees and adjustment of grievances. Additionally, the resident assistant approves employee requests for vacation, sick leave, and overtime. The homes located in Detroit and Ypsilanti operate under the direction of a different resident assistant.

All of the Saginaw homes are located within five minutes of the other home. Each Saginaw home has a home coordinator and several DCWs. Three of the four homes have both an assistant home coordinator and medication

coordinator. The home coordinator and medication coordinator are assigned to the first shift. The assistant home coordinator is assigned to the second shift and the DCWs are assigned to the second and third shifts based on the needs of the home. All positions take part in caring for the residents. Employees receive the same health care benefits and vacation time. Vacation time is dependent upon the years of service an employee has with the Employer.

Employees from the Saginaw homes are, at times, temporarily transferred to other Saginaw homes on an as-needed basis. If the DCWs do not volunteer to work at another home, the home coordinator or assistant home coordinator will fill in at the home. There is no evidence of interchange between the employees in Saginaw and those in Detroit and Ypsilanti.

Under all the circumstances in this case, I find that the home coordinators, assistant home coordinators, DCWs/behavioral technicians, and medication coordinators at the four Saginaw facilities have interests that are closely related to one another and are appropriately included in the petitioned-for unit.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time home coordinators⁹, assistant home coordinators, direct care workers (DCWs), behavioral technicians, and medication coordinators employed by the Employer at its facilities located at 202 Garden Lane, 72786 Cecilia, 3106 South Porter, and 1021 Webster, all in Saginaw, Michigan; but excluding all resident assistants, and guards and supervisors as defined in the Act.

Dated at Detroit, Michigan, this 23rd day of February 2006.

(SEAL)

"/s/ [Stephen M. Glasser]."

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

⁹ Although no party contends that the home coordinators are supervisors, their involvement in the disciplinary and hiring process raises sufficient concern that they may vote in the election ordered herein subject to challenge by any party. If they are later determined to be supervisory employees, the classification of home coordinator will be excluded from the unit description.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

LOCAL UNION 517M, SERVICE EMPLOYEES INTERNATIONAL UNION

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile or E-mail transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **March 2, 2006**. No extension of time to file this list shall be granted except in extraordinary

circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **March 9, 2006**.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.